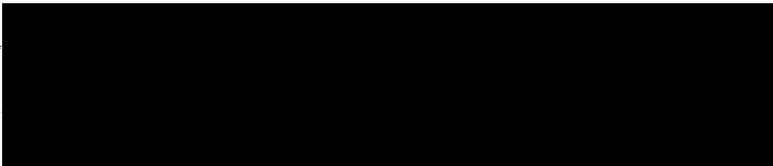




U.S. Citizenship
and Immigration
Services

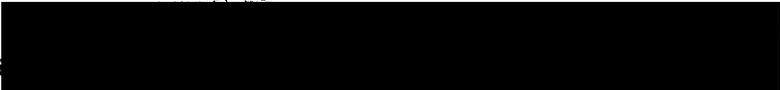
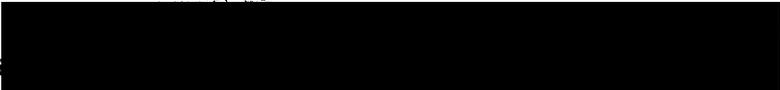
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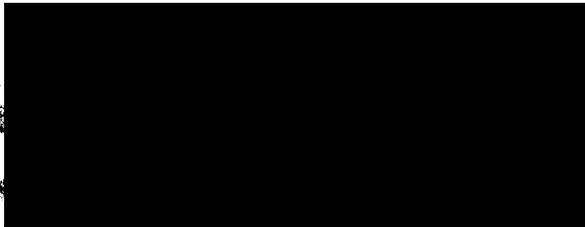
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FILE: WAC 04 010 54814 Office: CALIFORNIA SERVICE CENTER Date: **APR 20 2005**

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an auto repair shop, parts retail store, and auto club that seeks to employ the beneficiary as an accountant. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an accountant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail auditing contracts, orders, vouchers, and preparing reports to substantiate transactions prior to settlement; analyzing and compiling financial information to prepare entries to accounts; analyzing past and present financial operations, trends and costs, and estimated and realized revenues in order to prepare the budget and project future revenues and expenses; interpreting financial data to advise management on resources and budget forecasts; preparing the balance sheet, profit and loss statement, and other reports to summarize current and projected finances; establishing, modifying, and documenting the implementation of accounting control procedures; and all other bookkeeping and accounting tasks. The petitioner's October 7, 2003 letter stated that the proposed position requires "at least a baccalaureate degree in [c]ommerce or [b]usiness [a]dministration."

Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that not all of the proposed position's duties are similar to those of an accountant as that occupation is described in the *Handbook*. The director stated that the beneficiary will spend a significant amount of time performing bookkeeping duties, which do not require baccalaureate-level education, and that the organizational chart does not show a bookkeeper position. The director stated that the evidence indicates that not all of the proposed position's duties and stated level of responsibility indicate the complexity or scope of responsibility normally required of an accountant. In examining whether a titled position is a specialty occupation, the director stated that the actual duties to be performed are determinative and not the job title. The director found that the evidence did not persuasively show that the job offered could not be performed by a person whose educational training falls short of a baccalaureate degree.

On appeal, counsel narrates the proposed position's duties and states that they are complex and sophisticated, requiring a baccalaureate degree in accounting or a related field. The director erred, counsel asserts, in finding that a significant amount of time will be spent performing bookkeeper duties. A major part of the beneficiary's duties, counsel states, involve analysis and evaluation of financial information, planning, budgeting, auditing of financial statements, and recommending accounting systems and policies. These duties, counsel maintains, are performed by management accountants because bookkeepers do not analyze and evaluate income, expenses, and capital expenditures; and audit financial statements, contracts, orders, and vouchers in order to prepare cash flow and budgetary projections, or advise management about financial resources. Counsel asserts that the beneficiary's bookkeeping duties are incidental.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular

position; a specific degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

CIS interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one which is *in a specific specialty* that is directly related to the proffered position.

The AAO notes that in the appeal brief counsel states that the proposed position requires a bachelor’s degree in accounting or a related field. Counsel’s statement is inaccurate because the petitioner’s October 7, 2003 letter clearly states that the proposed position requires a baccalaureate degree in commerce or business administration. The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS vs. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The petitioner’s educational requirement of “at least a baccalaureate degree in [c]ommerce or [b]usiness [a]dministration” is not enough to establish that the proposed position qualifies as a specialty occupation. As stated by the court in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

In this case, the petitioner accepts a baccalaureate degree of generalized title, business administration, without indicating further specification. As discussed in *Matter of Michael Hertz Assocs.*, this educational requirement satisfies none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): (1) a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; (2) a specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty; (3) the petitioner normally requires a degree or its equivalent in a specific specialty for the proffered position; or (4) the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

As related in the discussion above, the petitioner has failed to establish that the proposed position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.